



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A-S-P-P-F-

DATE: FEB. 8, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a circus performer, seeks classification as an individual of “extraordinary ability” in the arts. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A); 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The classification the Petitioner seeks makes visas available to foreign nationals who can demonstrate extraordinary ability through sustained national or international acclaim and achievements that have been recognized in the area of expertise through extensive documentation. The Director determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitate a one-time achievement or evidence that meets at least three of ten regulatory criteria. On appeal, the Petitioner submits a legal brief and additional material.

**I. LAW**

Section 203(b) of the Act states in pertinent part:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if –

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

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The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming our proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that we appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

## II. ANALYSIS

### A. Evidentiary Criteria

The Director found the Petitioner met two of the necessary three criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). Specifically, the Director found that the Petitioner provided published material about himself in professional or major trade publications or other major media, as well as corroboration of a contribution of major significance in his field. 8 C.F.R. § 204.5(h)(3)(iii), (v). The Petitioner submitted numerous articles about himself and his motorcycle troupe that have appeared in a variety of media outlets, including [REDACTED]. In addition, the record confirms that the Petitioner’s [REDACTED] act had the world record for number of motorcyclists riding inside of a sphere at one time, thereby setting the bar to which others will aspire. As a result, we agree that the Petitioner has satisfied these two criteria. Accordingly, the sole issue on appeal is whether the Petitioner meets a third criterion. For the reasons discussed below, the Petitioner documented that he performed in a critical role for an organization with a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner has corroborated that [REDACTED] is an organization with a distinguished reputation in the circus world. We must therefore examine the Petitioner’s role at [REDACTED] and assess the nature of his position and his significance to the organization as a whole. The Petitioner has provided numerous examples of promotional materials produced by [REDACTED] that highlight him. A poster for the [REDACTED] troupe features a large picture of the [REDACTED] surrounded by other Latin American performers. In addition, the record contains numerous

examples of media attention given to [REDACTED] as a result of the Petitioner's record breaking act. In 2012, the [REDACTED] appeared on [REDACTED] in order to break the world record live on television. They were joined by the [REDACTED] ringmaster, who helped host the occasion and assisted in making the episode a promotional event for the circus. The Petitioner also submitted many reviews and notices regarding [REDACTED] performances, and his act is almost always listed as one of the most popular and noteworthy. The importance of the Petitioner's act to [REDACTED] success demonstrates his critical role in the organization. For these reasons, the Petitioner has satisfied the plain language of this criterion.

## B. Summary

The documentation provided satisfies three regulatory criteria. As a result, the Petitioner has submitted sufficient initial evidence of at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

## C. Final Merits Determination

The next step is a final merits determination that considers all of the evidence in the context of whether or not the Petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." § 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (h)(3). *See also Kazarian*, 596 F.3d at 1119-20.

As noted above, the Petitioner has made contributions of major significance in the field by breaking the world record in [REDACTED] for number of riders in a [REDACTED]. By setting this benchmark and establishing himself as the best in the world, the Petitioner proved himself to be one of the small percentage who have risen to the very top of the field of endeavor. Similarly, we note that the Petitioner has submitted numerous examples of national and international acclaim received for his accomplishments. In addition to his appearance on [REDACTED] the Petitioner and his troupe are featured in numerous popular publications. Above, we noted the [REDACTED] article about the [REDACTED] act. They have also appeared, however, on full page cover spreads in [REDACTED]. The Petitioner himself is the focus of an article in the "Interview" section of [REDACTED]. On appeal, the Petitioner provides circulation data and background information about the publications, which indicate a breadth of acclaim. When considered in their totality, the materials show the Petitioner has risen to the very top of his field of endeavor and has received the necessary national or international acclaim to qualify as an individual of extraordinary ability.

## III. CONCLUSION

The Petitioner submitted the requisite initial evidence and showed his extraordinary ability when considered in a final merits decision. § 203(b)(1)(A)(i) of the Act. He confirmed that he seeks to enter the United States to continue to work in his area of extraordinary ability. § 203(b)(1)(A)(ii) of the Act. By demonstrating that he seeks to continue to work in his area of extraordinary ability, and

there being no indication otherwise, we are satisfied that the Petitioner's entry will substantially benefit prospectively the United States. § 203(b)(1)(A)(iii). Therefore, the Petitioner has met the burden of proof necessary to establish eligibility for the benefit sought. §§ 203(b)(1)(A) & 291 of the Act.

**ORDER:** The appeal is sustained.

Cite as *Matter of A-S-P-P-F-*, ID# 15390 (AAO Feb. 8, 2016)